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**FROM THE
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FAKE
BILL

2004-2005

D-NOTE

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

29.024 (2u) REVOCATION OF HUNTING LICENSES BASED ON INCOMPETENCY. The department shall revoke any license authorizing hunting issued to an individual for whom the department receives a record of a declaration under s. 54.25 (2) (c) 1. d. stating that the individual is incompetent to apply for a hunting license under this chapter.

29.161 Resident small game hunting license. A resident small game hunting license shall be issued subject to ~~s.~~ ss. 29.024 and 54.25 (2) (c) 1. d. by the department to any resident applying for this license. The resident small game hunting license does not authorize the hunting of bear, deer, elk, or wild turkey.

29.164 (3) (e) *Notification; issuance; payment.* The department shall issue a notice of approval to those qualified applicants selected to receive a wild turkey hunting license. A person who receives a notice of approval and who pays the fee in the manner required by the department shall be issued a wild turkey hunting license subject to ss. 29.024 and 54.25 (2) (c) 1. d.

STRIKE PERIOD

X 29.171 (1) A resident archer hunting license shall be issued subject to ~~s. ss.~~ 29.024 and 54.25 (2) (c) 1. d. by the department to any resident applying for this license.

29.173 (1) ISSUANCE. A resident deer hunting license shall be issued subject to ~~s. ss.~~ 29.024 and 54.25 (2) (c) 1. d. by the department to any resident applying for this license.

29.182 (4m) LIMITATION OF ONE LICENSE. A person may be issued, or transferred under ~~par. (g)~~ sub. (4) (g), only one resident elk hunting license in his or her lifetime, and the resident elk hunting license shall be valid for only one elk hunting season. The issuance, or transfer under ~~par. (g)~~ sub. (4) (g), of the license to the person is subject to ~~s. ss.~~ 29.024 (2g) and 54.25 (2) (c) 1. d.

29.184 (6) (c) 1r. The department shall issue a notice of approval to those qualified applicants selected to receive a Class A bear license. A person who receives a notice of approval and who pays the fees required for the license shall be issued the license subject to ~~s. ss.~~ 29.024 (2g) and 54.25 (2) (c) 1. d.

29.184 (6) (c) 2. A Class B bear license shall be issued subject to ~~s. ss.~~ 29.024 (2g) and 54.25 (2) (c) 1. d. by the department to any resident who applies for this license.

29.231 (1) A resident sports license shall be issued subject to ~~s. ss.~~ 29.024 and 54.25 (2) (c) 1. d. by the department to any resident who applies for this license, and a nonresident sports license shall be issued subject to s. 29.024 by the department to any person who is not a resident and who applies for the license. X

29.235 (1) ISSUANCE. A resident conservation patron license shall be issued subject to ~~s. ss.~~ 29.024 and 54.25 (2) (c) 1. d. by the department to any resident 14 years old or older who applies for the license. A nonresident conservation patron

license shall be issued subject to s. 29.024 by the department to any person 14 years old or older who is not a resident and who applies for the license.

29.512 (1) No person may engage or be employed for any compensation or reward to guide, direct or assist any other person in hunting, fishing or trapping unless the person is issued a guide license by the department subject to ~~s.~~ ss. 29.024 and 54.25 (2) (c) 1. d. No guide license for hunting or trapping may be issued to or obtained by any person who is not a resident of this state. No guide license may be issued to any person under the age of 18 years. The holder of a guide license shall comply with all of the requirements of this chapter.

46.011 Definitions. (intro.) In chs. 46, 48, 50, 51, 54, 55 and 58:

CHAPTER 54

GUARDIANS AND ^{HIPS}WARDS ^{WAS} CONSERVATORSHIPS

****NOTE: "Guardians and Wards" is the title of ch. 880; is it what you want as the title of ch. 54?

****NOTE: With respect to psychotropic medication, this is what I have done either in this redraft or previously in LRB-0039/P1:

- a. Repealed s. 880.01 (7m), stats. (the definition of "not competent to refuse psychotropic medication"), previously renumbered as s. 54.01 (11).
- b. Created s. 54.01 (18), a definition of "psychotropic medication," based on the Legislative Council draft WLC: 0220/P1.
- c. Repealed s. 880.07 (1m), stats. (allegations in a petition that a person is incompetent to refuse psychotropic medication).
- d. Stricken reference to incompetence to refuse psychotropic medication from s. 54.36 (renumbered from s. 880.33 (1), stats.).
- e. Repealed s. 880.33 (4m) and (4r), stats. (court appointment of guardian to consent or refuse, standard for forcible administration).
- f. Repealed s. 880.34 (6), stats., as does WLC: 0220/P1 (annual review, etc.).
- g. Added to s. 54.25 (2) (d) 2. a. language from WLC: 0220/P1 concerning voluntary receipt by a ward of medication, including psychotropic medication, if the ward does not protest, prohibiting the involuntary administration of psychotropic medication, defining "protest," and creating a best interest standard.
- h. Repealed s. 880.33 (2) (d), stats. (hearing on petition).

Please see my Drafter's Note concerning this topic and its treatment in this draft.

SUBCHAPTER I

DEFINITIONS

54.01 Definitions. In this chapter:

(1) "Activities of daily living" means activities relating to the performance of self care, work, and leisure activities, including dressing, eating, grooming, mobility, and object manipulation.

****NOTE: I have in this revised definition removed "feeding," which seems unrelated to self care, and play, which seems redundant to "leisure."

I have not added "without limitation," as proposed; it is unnecessary if the term "including" is used.

(2) "Agency" means any public or private board, corporation, or association which, including a county department under s. 51.42 or 51.437, that is concerned with the specific needs and problems of mentally retarded, developmentally disabled, mentally ill, alcoholic, drug dependent and aging persons, including a county department under s. 51.42 or 51.437 individuals with developmental disability, mental illness, alcoholism, or drug dependency and of aging individuals.

(3) "Conservator" means a person who is appointed by a court at an individual's request under s. 54.76 (2) to manage the estate of the individual.

(4) "Degenerative brain disorder" means an individual's loss or disfunction of brain cells to the extent that the individual is substantially impaired in ability to provide for his or her own care or custody.

****NOTE: This is the definition (revised grammatically) from WLC: 0037/1. Does one provide for one's own custody?

(5) "Depository account" has the meaning given in s. 815.18 (2) (e).

(6) "Durable power of attorney" has the meaning given in s. 243.07 (1) (a).

****NOTE: I have renumbered most of the definitions in this draft, to account for added definitions. This subsection was originally numbered (3m) as a time-saving measure. In addition, I have not added "or s. 243.10" as requested. The definition under s. 243.07 (1) (a) subsumes the form for the Wisconsin basic power of attorney for finances and property under s. 243.10; in addition, s. 243.10 is not a definition per se; and, lastly, a defined term in the statutes that refers to another defined term may have only one referent (i.e., it may not be defined to be "A" or "B").

****NOTE: Note that I have not included your proposed definition of "evaluative capacity." Please see the **** NOTE under the definition of "incapacity."

Do you want to add language on that issue?

the legislative Council ch. 55 draft. It has no language concerning "handling financial matters."

essential requirements for health and safety and the

(7) "Guardian" means ~~one~~ a person appointed by a court under s. 54.10 to have care, custody and control of the person ~~act on behalf of a minor or an individual determined incompetent or the management of~~ ^{the income and assets and} ~~to~~ manage the estate ^{found} or provide for the personal needs of a minor, an individual ~~determined~~ incompetent, or a spendthrift.

****NOTE: I did not include corporate guardians or entity guardians in this definition as requested. Please look at the definition of "person" in s. 990.01 (26), stats., (which applies to all the statutes). It encompasses corporate guardian and entity guardians. This definition indicates that only a guardian of the estate is appointed for a spendthrift; correct?

INSERT 5A

(8) "Guardian of the estate" means a guardian appointed to comply with the duties specified in s. 54.19 and to exercise any of the powers specified in s. 54.20.

(9) "Guardian of the person" means a guardian appointed to comply with the duties specified in s. 54.25 (1) and to exercise any of the powers specified in s. 54.25

INSERT SB (2).

(10) "Incapacity" means the inability of an individual effectively to receive and evaluate information or to communicate a decision with respect to the exercise of a right or power.

****NOTE: On Betsy Abramson's advice, this definition is the same language as that proposed in your "Appendix: Alternative Language" as the definition of "evaluative capacity," except that: (1) It is written in the negative (i.e., "inability" rather than "ability"); (2) I omitted "make [a decision]" because that seems redundant to "communicate a decision"; and (3) I omitted "decision making," because that seems unnecessary (all powers of an individual would appear to require some form of decision making). Note that this definition replaces use of the terms "incapacity," "functional capacity," and "evaluative capacity" throughout the draft, except for the term "incapacity of the guardian," which has been changed to "inability of the guardian." This change particularly affects the following: 54.01 (21), 54.15 (4), 54.21 (6) (a) and (c), 54.52 (2), and 54.68 (2) (f). After studying the issue further, I did not change the term "incapacitated" as it is used in numerous places in s. 54.50 (2) (renumbered from s. 50.06, stats.); use of that term in that subsection is subject to the definition of the term in s. 54.50 (2) (a), which limits the individual lack of capacity to health care decisions; I would think that you would want to keep this limitation. Please review.

****NOTE: I have repealed the definition of "incompetent" that was amended under 03-0039/P1, because the new language proposed for s. 54.10 replaces the definition. I also have not drafted the definition of "individual found incompetent" that was proposed,

if an individual is unable to communicate a decision, it's irrelevant that he or she has made one.

because, where the term is used, reference to s. 54.10 can be added and the defined term is then unnecessary. See, for example, this treatment in s. 54.01(7).

INSERT 6

(11) "Developmentally disabled person Individual with developmental disability" means any individual having a disability attributable to mental retardation, cerebral palsy, epilepsy, autism or another neurological condition closely related to mental retardation or requiring treatment similar to that required for ~~mentally retarded~~ individuals with mental retardation, which has continued or can be expected to continue indefinitely, substantially impairs the individual from adequately providing for his or her own care or custody, and constitutes a substantial handicap to the afflicted individual. The term does not include ~~a person an~~ individual affected by ~~senility~~ which is primarily caused by the process of aging or ~~the infirmities of aging~~ degenerative brain disorder. dementia

(12) "Interested person" means any of the following:

(a) For purposes of a petition for guardianship or protective placement, any of the following:

***NOTE: Do you intend in this bill to amend ch. 55 to use this definition? Where?

1. The proposed ward, if he or she has attained 14 years of age.
2. The spouse or adult child of the proposed ward, or the parent of a proposed ward who is a minor.
3. For a proposed ward who has no spouse, child, or parent, an heir, as defined in s. 851.09, of the proposed ward that may be reasonably ascertained with due diligence.
4. Any individual who is nominated as guardian or any individual who is appointed to act as guardian or fiduciary for the proposed ward by a court of any state, any trustee for a trust established by or for the proposed ward, any person appointed as agent under a

as defined in s. 155.01(4),

agent

power of attorney for health care, or any person appointed as ~~attorney-in-fact~~ under a durable power of attorney. under ch. 243

***NOTE: Please note that I retained "or," rather than using "and" as proposed for s. 54.01 (12) (a) 2., 3., and 4., to avoid the implication that all persons specified would be collectively required to function as "interested persons". Also, your instructions were unclear: do you wish to retain "fiduciary" in the phrase "appointed to act as ..."?

5. If the proposed ward is a minor, the individual who has exercised principal responsibility for the care and custody of the proposed ward during the period of 60 consecutive days immediately before the filing of the petition.

6. If the proposed ward is a minor and has no living parent, any individual nominated to act as fiduciary for the minor in a will or other written instrument that was executed by a parent of the minor.

7. If the proposed ward is receiving moneys paid, or if moneys are payable, by the federal department of veterans affairs, a representative of the federal department of veterans affairs, or, if the proposed ward is receiving moneys paid, or if moneys are payable, by the state department of veterans affairs, a representative of the state department of veterans affairs.

8. If the proposed ward is receiving long-term support services or similar public benefits, the county department of human services or social services that is providing the services or benefits.

9. The corporation counsel of the county in which the petition is filed and, if the petition is filed in a county other than the county of the proposed ward's residence, the corporation counsel of the county of the proposed ward's residence.

***NOTE: I did not draft the language you proposed as a change to this subdivision from the language in LRB-0039/P1, because, under your wording, the corporation counsel of the county in which the petition is filed would only be included if the petition was filed in a county other than the county of the proposed ward's residence; I assumed that this result is not what you intend.

10. Any other person required by the court.

(b) For purposes of proceedings subsequent to an order for guardianship ^{or} protective placement, any of the following:

****NOTE: Do you intend in this bill to amend ch. 55 with this definition? If not, the reference to "for purposes of a petition for protective placement" should be eliminated.

****NOTE: Please note that I did not make the change from "any" to "all," so as to avoid the implication that an "interested person" must include all those specified.

1. The guardian.
2. The spouse or adult child of the ward or the parent of a minor ward.

5 3. Any other individual that the court may require, including any fiduciary that the court may designate.

3 4. The county of venue, if the county has an interest.

18 13 "Least restrictive" means that which places the least possible restriction on personal liberty and the exercise of rights and that promotes the greatest possible integration of an individual into his or her community that is consistent with meeting his or her essential requirements for health, safety, habilitation, treatment, and recovery and protecting him or her from abuse, exploitation, and neglect.

****NOTE: I did not draft "constitutional" to modify rights; presumably, you don't want to limit the person to constitutionally-guaranteed rights to the exclusion of statutory rights.

INSERT 8A

20 14 "Meet the essential requirements for physical health or safety" means perform those actions necessary to provide the health care, food, shelter, ^{clothing} clothes, personal hygiene, and other care without which serious physical injury or illness will likely occur.

24 15 "Physician" has the meaning given in s. 448.01 (5).

26 16 "Proposed ward" means ^{an individual} ~~an individual, including~~ a minor, a person alleged to be incompetent, and alleged spendthrift, for whom a petition for guardianship is filed. ^{or an}

INSERT 8B

INSERT 8C

****NOTE: Please review this definition. Because you have decided to include spendthrifts in ch. 54, use of this definition eliminates the necessity of specifying spendthrifts throughout the chapter, as does the definition of "ward."

(27) (17) "Psychologist" ~~has the~~ means a licensed psychologist, as defined given in s. 455.01 (4).

(28) (18) "Psychotropic medication" means a prescription drug, as defined in s. 450.01 (20), that is used to treat a psychiatric symptom or challenging behavior.

INSERT 9A (30) (19) "Serious and persistent mental illness" means a mental illness ~~which~~ is severe in degree and persistent in duration, ~~which~~ causes a substantially diminished level of functioning in the primary aspects of daily living and an inability to cope with the ordinary demands of life, ~~which~~ may lead to an inability to maintain stable adjustment and independent functioning without long-term treatment and support and ~~which~~ may be of lifelong duration. "Serious and persistent mental illness" includes schizophrenia as well as a wide spectrum of psychotic and other severely disabling psychiatric diagnostic categories, but does not include degenerative brain disorder or a primary diagnosis of ~~mental retardation~~ or of alcohol or drug dependence. *a developmental disability*

****NOTE: I included this definition (the same as s. 51.01 (3g), stats.) because the term "serious and persistent mental illness" is now used in s. 54.15 (6) and is not, at present, elsewhere defined. It contains the term "infirmities of aging," which I have changed to "degenerative brain disorder." Please review.

(20) "Spendthrift" means an individual who, because of the use of alcohol or other drugs or because of gambling or other wasteful course of conduct, is unable to ~~manage effectively his or her financial affairs~~ attend to business or is likely to affect the health, life, or property of himself or herself or others so as to endanger his or her support and dependents or expose the public to the support. *responsibility for his or her* *the support of his or her*

****NOTE: I created this definition in ch. 54, instead of renumbering it from ch. 880, stats., because it is used in subchapter IV of ch. 880, stats. Do you want to move subch. IV to ch. 54? Where? Is my changed language for the definition what you want?

INSERT 9B

33 (21) "Standby guardian" means an individual designated by the court under s. 54.52 (2) whose appointment as guardian becomes effective immediately upon the death ^{or court's removal} or resignation of the initially-appointed guardian, or if the initially appointed guardian is temporarily or permanently unable ^{or unavailable} or unavailable to fulfill his or her duties. ^{or unwilling}

(22) "Ward" means an individual for whom a guardian has been appointed.

INSERT 10

SUBCHAPTER II

APPOINTMENT OF GUARDIAN

54.10 Appointment of guardian.

(1) A court may appoint a guardian of the person or a guardian of the estate ^{or both,} for a proposed ward if the court determines that the individual is a minor.

(2) A court may appoint a guardian of the ~~estate~~ ^{person or a guardian of the estate, or both,} for a proposed ward if the court determines that the individual is a spendthrift.

****NOTE: Although you indicate that you wish to include spendthrifts in ch. 54, no language proposed addresses the actual appointment or any standard to be used. I have created s. 54.10 (2) to begin to address this issue. Please review.

(3) (a) A court may appoint a guardian of the person or a guardian of the estate, or both, for an individual based on a finding that the individual is incompetent only if the court finds by clear and convincing evidence that all of the following are true:

1. The individual is aged at least 17 years and 9 months.
2. For purposes of appointment of a guardian of the person, because of an impairment, the individual is unable effectively to receive and evaluate information or to make ^{or} communicate decisions to such an extent that the individual is unable to meet the essential requirements for his or her physical health and safety.
3. For purposes of appointment of a guardian of the estate, because of an impairment, the individual is unable ~~to~~ effectively to receive and evaluate

information or to make or communicate decisions related to management of his or her property or financial affairs, to the extent that any of the following applies:

- a. The individual has property that will be dissipated in whole or in part.
- b. The individual is unable to provide for his or her support.
- c. The individual is unable to prevent financial exploitation.

4. The individual's need for assistance in decision-making or communication is unable to be met effectively and less restrictively through appropriate and reasonably available training, education, support services, health care, assistive devices, or other means that the individual will accept.

(b) Unless the proposed ward is unable to communicate decisions effectively in any way, the determination under par. (a) may not be based on mere old age, eccentricity, poor judgment, or physical disability.

(c) In appointing a guardian under this subsection, declaring incompetence to exercise a right under s. 54.25 (2) (c), or determining what powers it is appropriate for the guardian to exercise under s. 54.18, 54.20, or 54.25 (2), the court shall consider all of the following:

1. The report of the guardian ad litem, as required in s. 54.40 (4) ~~(c)~~.
2. The medical or psychological statement provided under s. 54.36 and any additional medical, psychological, or other evaluation ordered by the court under s. 54.40 (4) (e) or offered by a party and received by the court.

pursuant to the request of a guardian ad litem

~~***NOTE: Are the cross-references in par. (c) (intro.), 1, and 2. What you intend?~~

4 3. Whether other reliable resources are available to provide for the individual's personal needs or property management, and whether appointment of a guardian is the least restrictive means to provide for the individual's need for a substitute decision-maker.

executing for health care
3. Whether the proposed ward has engaged in any advance planning for financial and health care decision-making that would avoid guardianship, including a durable power of attorney under ch. 543, a ~~health care~~ power of attorney as defined in s. 155.01 (10), a trust, or a jointly held account.

⁵4. The preferences, desires, and values of the individual with regard to personal needs or property management.

⁶5. The nature and extent of the individual's care and treatment needs and property and financial affairs.

⁷6. Whether the individual's situation places him or her at risk of abuse, exploitation, neglect, or violation of rights.

⁸7. Whether the individual can adequately understand and appreciate the nature and consequences of his or her impairment.

⁹8. The individual's management of the activities of daily living.

¹⁰9. The individual's understanding and appreciation of the nature and consequences of any inability he or she may have with regard to personal needs or property management.

¹¹10. The extent of the demands placed on the individual by his or her personal needs and by the nature and extent of his or her property and financial affairs.

¹²11. Any physical illness of the individual and the prognosis of the individual.

¹³12. Any mental disability, alcoholism, or other drug dependence of the individual and the prognosis of the mental disability, alcoholism, or other drug dependence.

¹⁴13. Any medication with which the individual is being treated and the medication's effect on the individual's behavior, cognition, and judgment.

¹⁵14. Whether the effect on the individual's evaluative capacity is likely to be temporary or long-term, and whether the effect may be ameliorated by appropriate treatment.

¹⁶15. Other relevant evidence.

(d) Before appointing a guardian under this subsection, declaring incompetence to exercise a right under s. 54.25 (2) (c), or determining what powers it is appropriate for the guardian to exercise under s. 54.18, 54.20, or 54.25 (2), the court shall determine if additional medical, psychological, social, vocational, or educational evaluation is necessary for the court to make an informed decision respecting the individual's competency to exercise legal rights and may obtain assistance in the manner provided in s. 55.06 (8) whether or not protective placement is made.

(e) In appointing a guardian under this subsection, the court shall authorize the guardian to exercise only those powers under ss. 54.18, 54.20, and 54.25 (2) that are necessary to provide for the individual's personal needs and property management and to exercise the powers in a manner that is appropriate to the individual and that constitutes the least restrictive form of intervention.

(4) If the court appoints both a guardian of the person and a guardian of the estate for an individual, the court may appoint separate persons to be guardian of the person and of the estate, or may appoint one person to act as both.

54.12 Exceptions to appointment of guardian. (1) SMALL ESTATES. If a minor or an individual found incompetent, except for his or her incapacity, is entitled to possession of possess personal property of a value of \$10,000 or less, any court wherein \$20,000 in which an action or proceeding involving said assets the property is pending may, in its discretion, without requiring the appointment of a guardian, order that the clerk of court do one of the following: register in probate

***NOTE: I have assumed from the language in par. (a) (below) that the clerk of court would perform these functions. Correct?

⑥(5) The court may appoint co-guardians of the person or co-guardians of the estate, subject to any conditions that the court imposes.

an interest-bearing

(a) Deposit the property in ~~a savings~~ account in a bank, ~~the payment of whose~~ accounts in cash immediately upon default of the bank are or other financial institution insured by an agency of the federal deposit insurance corporation; deposit in ~~a savings account in a savings bank or a savings and loan association that has its deposits insured by the federal deposit insurance corporation~~; deposit in a savings account in a credit union having its deposits guaranteed by the ~~Wisconsin credit union savings insurance corporation or by the national board, as defined in s. 186.01 (3m)~~; government or invest the property in interest-bearing obligations of the United States. The fee for the clerk's services of the clerk of court in depositing and disbursing the funds under this paragraph is prescribed in s. 814.61 (12) (a). register in probate

814.66
(1) (n)

(b) Payment Make payment to the natural guardian of the minor or to the person having actual custody of the minor. parent

****NOTE: The proposed material referred to "the natural guardian of the minor, as defined in sub. _____," but no definition was included, unless you were referring to the definition of "minor." What is a "natural" guardian? Is it the parent?

(c) Payment Make payment to the minor. of the individual found incompetent

individual found

(d) Payment Make payment to the person having actual or legal custody of the incompetent or to the person providing for the incompetent's care and maintenance for the benefit of the incompetent. individual found

(e) Make payment to the agent under a durable power of attorney of the ward.

(f) Make payment to the trustee of any trust created for the benefit of

(2) INFORMAL ADMINISTRATION. If a minor or an incompetent, except for his or her incapacity, is entitled to possession of personal property of a value of \$5,000 \$10,000 or less from an estate administered through informal administration under ch. 865, the personal representative may, without the appointment of a guardian, do any of the following:

assets

the ward

individual found

(1g)

the amount specified in s. 867.03 (1) (intro.)

INSERT 14

(a) With the approval of the register in probate, take one of the actions under specified in sub. (2) (1) (a) to (e). f

(b) With the approval of the guardian ad litem of the minor or incompetent, take one of the actions under specified in sub. (2) (1) (a) to (e) and file proof of the action taken and of the approval of the guardian ad litem with the probate registrar instead of filing a receipt under s. 865.21. f individual found

(3) UNIFORM GIFTS AND TRANSFERS TO MINORS. If a minor, except for his or her incapacity, is entitled to possession of personal property of any value, any court wherein in which an action or proceeding involving the property is pending may, without requiring the appointment of a guardian, order payment, subject to any limitations the court may impose, to a custodian for the minor designated by the court under ss. 880.61 to 880.72 subch. III of ch. 880 or under the uniform gifts to minors act or uniform transfers to minors act of any other state. 54.854 to 54.898

RESTORE TO PLAIN TEXT

****NOTE: This cross-reference must be fixed if you choose to renumber the remaining subchapters in ch. 880.

SUBCHAPTER III

NOMINATION OF GUARDIAN;

POWERS AND DUTIES; LIMITATIONS

54.15 ~~Nomination; selection of guardians~~ Selection of guardian; nominations; preferences; other criteria. The court shall do one of the following and shall consider all of the following nominations ~~made by any interested person and, in its discretion, shall appoint a proper guardian, having due regard for the following, applicable preferences, and criteria in determining who is appointed as guardian:~~

(1) OPINIONS OF PROPOSED WARD AND FAMILY. ~~In appointing a guardian, the~~ The court shall take into consideration the opinions of the ~~alleged incompetent~~ proposed ward and of the members of the his or her family as to what is in the best interests of the proposed ~~incompetent~~ ward. However, the best interests of the proposed ~~incompetent~~ ward shall control in making the determination when the opinions of the family are in conflict with ~~the clearly appropriate decision~~ those best interests. The court shall also consider potential conflicts of interest resulting from the prospective guardian's employment or other potential conflicts of interest. ~~If the proposed incompetent has executed a power of attorney for health care under ch. 155, the court shall give consideration to the appointment of the health care agent for the individual as the individual's guardian.~~

(2) AGENT UNDER DURABLE POWER OF ATTORNEY. The court shall appoint as guardian of the estate ~~the~~ an agent under a proposed ward's durable power of attorney, unless the court finds that the appointment of ~~the~~ an agent is not in the best interests of the proposed ward.

***NOTE: This provision is written as a requirement, as are ss. 54.15 (4) (renumbered from s. 880.09 (7)), 54.15 (5) (renumbered from s. 880.09 (2)), and 54.15 (6) (renumbered from s. 880.09 (6)); what does the judge do if they conflict?

(3) AGENT UNDER A POWER OF ATTORNEY FOR HEALTH CARE. The court shall appoint as guardian of the person the agent under a proposed ward's power of attorney for health care, unless the court finds that the appointment of the agent is not in the best interests of the proposed ward.

(4) PERSON NOMINATED BY PROPOSED WARD.

(a) Any ~~person~~ individual other than a minor aged 14 years or younger may, ~~at such time as if the person has sufficient capacity~~ individual does not have incapacity to such an extent that he or she is unable to form ~~an intelligent~~ a reasonable and informed preference,

execute a written instrument, in the same manner as the execution of a will under s. 853.03, nominating ~~a person~~ another to be appointed as guardian of his or her person or property estate or both ~~in the event that if~~ a guardian is in the future appointed. ~~Such nominee shall be appointed as guardian by the~~ for the individual. The court shall appoint this nominee as guardian unless the court finds that the appointment of such nominee is not in the best interests of the ~~person for whom, or for whose property, the guardian is to be appointed~~ proposed ward.

(b) A minor ~~over~~ 14 years or older may in writing in circuit court nominate his or her own guardian, but if the minor is in the armed service, is ~~without~~ outside of the state, or if other good reason exists, the court may dispense with the minor's right of nomination. or unless the court finds that the appointment is not in the minor's best interests

(c) If neither parent of a minor ~~who has not attained the age of 15~~ is 14 years or older is suitable and willing to be appointed guardian, the court may appoint the nominee ~~of a minor.~~ the

****NOTE: Have I amended paragraphs (b) and (c) (renumbered from s. 880.09 (1) and (3), stats.) as you wish?

(5) PREFERENCE PARENT OF A PROPOSED WARD. If one or both of the parents of a minor, ~~a developmentally disabled person or a person with other like incapacity or an individual with developmental disability~~ are suitable and willing, the court shall appoint one or both of them as guardian unless the proposed ward objects. ~~The court shall appoint a corporate guardian under s. 880.35 only if no suitable individual guardian is available.~~ or with serious and persistent mental illness

****NOTE: Your instructions on this subsection are as follows:

"... please delete "or other person with other like incapacity" and change. Perhaps we should check with WCA as to whether there are any other situations where parents should be preferred ...?" How do you want me to change the phrase? Have you been able to check with WCA?

Should the parent of a spendthrift receive preference under this subsection?
(Current law does not mention parents of spendthrifts.)

SECRET

unless the court finds that appointment of the guardian or successor guardian is not in the minor's best interests

(6) TESTAMENTARY GUARDIANSHIP OF CERTAIN PERSONS NOMINATION BY PROPOSED

WARD'S PARENTS. Subject to the rights of a surviving parent, a parent may by will nominate a guardian and successor guardian of the person or estate of for any of his or her minor children who are is in need of guardianship. For ~~a person over the age~~ of an individual who is aged 18 or older and is found to be in need of guardianship under s. 880.33 54.10 by reason of a developmental disability or ~~other like incapacity~~ serious and persistent mental illness, a parent may by will nominate a testamentary guardian. The parent may waive the requirement of a bond for such an estate that is derived through a will.

an unincorporated association

estate

INSERT 18AB

(7) NONPROFIT CORPORATION AS GUARDIAN PRIVATE NONPROFIT CORPORATION OR

OTHER ENTITY. A private nonprofit corporation organized under ch. 181, 187, or 188 is ~~qualified to act or any other nonprofit or for profit entity that is approved by the court may be appointed as guardian of the person or of the property or both, of an individual found to be in need of guardianship under s. 880.33, if a proposed ward, if no suitable individual is available as guardian and the department of health and family services, under rules established under ch. 55, finds the corporation or entity to be a suitable agency to perform such duties.~~

promulgated

this chapter

***NOTE: In LRB-0039/P1, I asked for an example of nonprofit entity that is not organized under ch. 181, 187, or 188, stats. Your answer was a partnership, LLC, trust, unincorporated association. Rob Marchant, our Business Associations drafter, has not heard of a non-profit LLC or partnership. Do you perhaps, instead, mean tax-exempt under 501c? Would you ever want a trust to be guardian of the *person*? If you are contemplating the possible appointment of all these, plus an unincorporated association as guardian, wouldn't it be simpler to refer to "person," (under the very broad meaning in s. 990.01 (26), stats., instead?

***NOTE: Why does DHFS promulgate these rules under ch. 55, stats? Why not under this chapter (formerly, ch. 880, stats.)?

INSERT 18BA

(8) STATEMENT OF ACTS BY PROPOSED GUARDIAN. (a) At least 96 hours before the

hearing under s. 54.44, the proposed guardian shall submit to the court a sworn and notarized statement as to whether any of the following is true:

1. The proposed guardian has been convicted of a crime, as defined in s. 939.12.

****NOTE: Is this definition of a crime what you want? Note that it includes misdemeanors (which are distinguished from felonies in that felonies are punishable by imprisonment in state prison, whereas misdemeanors are punishable by imprisonment in a county jail).

2. The proposed guardian has filed for or received protection under the federal bankruptcy laws.

3. Any license, certificate, permit, or registration of the proposed guardian that is required under chs. 440 to 480 or by the laws of another state for the practice of a profession or occupation has been suspended or revoked.

4. The proposed guardian is listed under s. 146.40 (4g)(a) 2.

- (b) If par. (a) 1., 2., or 3. applies to the proposed guardian, he or she shall include in the sworn and notarized statement a description of the circumstances surrounding the applicable event under par. (a) 1., 2., or 3.

(9) LIMITATION ON NUMBER OF WARDS OF GUARDIAN. ~~No person, except a nonprofit corporation approved by the department of health and family services under s. 880.35, who has individual may have guardianship of the person of more than 5 or more adult wards who are unrelated to the person may accept appointment individual, except that a court may, under circumstances that the court determines are appropriate, waive this limitation to authorize appointment of the individual as guardian of the person of another adult ward unrelated to the person, unless approved by the department. No such person may accept appointment as guardian of no more than 10 such an additional adult wards who are unrelated to the person individual. A corporation or entity that is approved by the department under sub. (7) is not limited in the number of adult wards for which the corporation or entity may accept appointment by a court as guardian.~~

54.18 General duties and powers of guardian; limitations; immunity.

- (1) A ward retains all his or her rights that are not assigned to the guardian or

otherwise limited by statute. A guardian acting on behalf of a ward may exercise only those powers that the guardian is authorized to exercise by statute or court order. A guardian may be granted only those powers necessary to provide for the personal needs or property management of the ward in a manner that is appropriate to the ward and that constitutes the least restrictive form of intervention.

(2) A guardian shall do all of the following:

(a) Exercise the degree of care, diligence, and good faith when acting on behalf of a ward that an ordinarily prudent person exercises in his or her own affairs.

(b) Advocate for the ward's best interests, including, if the ward is protectively placed under ch. 55 and if applicable, advocating for the ward's applicable rights under ss. 50.09 and 51.61.

(c) Exhibit the utmost degree of trustworthiness, loyalty, and fidelity in relation to the ward.

(d) Notify the court of any change of address of the guardian or the ward.

(3) No guardian may do any of the following:

(a) ~~No guardian shall lend guardianship~~ Lend funds of the ward to himself or herself or, unless the court first approves the terms, rate of interest, and any requirement for security, lend funds of the ward to another.

(c) ~~(b) No guardian shall purchase~~ Purchase property of the ward, ~~unless sold at public sale except at fair market value, subject to ch. 786, and with the approval of the court, and then only if the guardian is a spouse, parent, child, brother or sister of the ward or is a cotenant with the ward in the property.~~

****NOTE: I corrected the numbering of the paragraphs under this subsection (I had mistakenly renumbered par. (a) from s. 880.19 (4) (c) as s. 54.18 (3) (h), rather than s. 54.18 (3) (a)).

(b) Lend funds of the ward to another individual or to an entity, unless the court first approves the terms, rate of interest, and any requirement for security.

, following any applicable procedures of s. 54.22,

(4) Any A guardian of the person or of the estate is immune from civil liability for his or her acts or omissions in performing the duties of the guardianship if he or she performs the duties in good faith, in the best interests of the ward, and with the degree of diligence and prudence that an ordinarily prudent person exercises in his or her own affairs.

Subject to s. 54.18(1) and

54.19 Duties of guardian of the estate. Except as specifically limited in the order of appointment, the guardian of the estate shall do all of the following in order to provide a ward with the greatest amount of independence and self-determination with respect to property management in light of the ward's functional level, understanding, and appreciation of his or her functional limitations and the ward's personal wishes and preferences with regard to managing the activities of daily living:

the income and assets of the ward

(1) ~~The guardian of the estate shall take~~ Take possession of all of the ward's real and personal property, and of any rents, income, issues, and benefits ~~therefrom~~, whether accruing before or after the guardian's appointment from the property, and of the any proceeds arising from the sale, mortgage, lease, or exchange thereof of the property and prepare an inventory of these. Subject to ~~such~~ this possession, the title of all ~~such the estate~~ and to the increment and proceeds thereof shall be of the estate ~~is~~ in the ward and not in the guardian. It is ~~the duty of the guardian of the estate~~ to protect and preserve it, to retain, sell and invest it as hereinafter provided, to account for it faithfully, to perform all other duties required of the guardian by law and at the termination of the guardianship to deliver the assets of the ward to the persons entitled thereto.

(2) Retain, expend, distribute, sell, or invest the ward's property, rents, income, issues, benefits, and proceeds and account for all of them, subject to ch. 786.

****NOTE: Please see the ****NOTE under s. 54.22 (renumbered from s. 880.19 (5))

(b)).

(3) Determine, if the ward has executed a will, the will's location, determine the appropriate persons to be notified in the event of the ward's death, and, if the death occurs, notify those persons.

****NOTE: Please see the ****NOTE under s. 54.22 (renumbered from s. 880.19 (5)).

(b)).

(4) Use the ward's income and property to maintain and support the ward and any dependents of the ward and to provide for the postsecondary education expenses of any children of the ward.

****NOTE: Please see the ****NOTE under s. 54.22 (renumbered from s. 880.19 (5)).

(b)).

(5) Prepare and file an annual account as specified in s. 54.62.

(6) At the termination of the guardianship, deliver the ward's assets to the persons entitled to them.

, including by filing tax returns and paying any taxes owed,

(7) ~~Every general guardian shall~~ With respect to claims, pay the just legally enforceable debts of the ward out of ~~from~~ the ward's personal estate and the income of the ward's real estate, if sufficient, and if not, then out of the ward's real estate upon selling the same as provided by law. But a temporary guardian shall pay the debts of his or her ward only on order of the court.

and
assets

actual

(8) File, with the register of deeds of any county in which the ward possesses real property of which the guardian has knowledge, a sworn and notarized statement that specifies the legal description of the property, the date that the ward is determined to be an incompetent, and the name, address, and telephone number of the ward's guardian and any surety on the guardian's bond.

(9) Perform any other duty required by the court order.

54.20 Powers of guardian of the estate. (1) STANDARD. (intro.) The In exercising the powers under this section, the guardian of the estate ~~may, without the approval of the court, retain any real or personal property possessed by the ward at the time of appointment of the guardian or subsequently acquired by the ward by gift or inheritance without regard to ch. 881, so long as such retention constitutes the exercise of~~ shall use the judgment and care under the circumstances then prevailing, which that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to including the permanent, rather than speculative, disposition of their funds, considering and consideration of the probable income as well as the probable and safety of their capital. In addition, in exercising powers and duties under this section, the guardian of the estate shall consider, consistent with the functional limitations of the ward, all of the following:

(a) The ward's understanding of the harm that he or she is likely to suffer as the result of his or her inability to manage property and financial affairs.

(b) The ward's personal preferences and desires with regard to managing his or her activities of daily living.

(c) The least restrictive form of intervention for the ward.

***NOTE: Does this subsection now conform to your intent?

ward's income and assets

(2) **POWERS REQUIRING COURT APPROVAL.** The guardian of the estate may do any of the following with respect to the ward only with the court's prior written approval following any petition, except as provided in par (a), notice, and hearing that the court requires:

and upon any

(a) Make gifts, under the terms, including the frequency, amount, and donees specified by the court in approval of a petition under s. 54.21.

****NOTE: Please review s. 54.20 (2) (intro.) and (a); have I now captured your intent?

(b) ~~Upon petition by the guardian, a parent, the spouse, any issue or next of kin of any person, assets of the person may, in the discretion of the court and upon its order, after such notice as the court may require, be transferred~~ Transfer assets of the ward to the trustee or trustees of an any existing revocable living trust created by the person for the benefit of that the ward has created for himself or herself and those dependent upon the person for support any dependents, or, if the ward is a minor, to the trustee or trustees of a any trust created for the exclusive benefit of the person, if a minor, which ward that distributes to him or her at age 18 or 21, or, if the ward dies before age 18 or 21, to his or her estate, or as he or she appoints if he or she dies prior to age 18 or 21 the ward has appointed by a written instrument that is executed after the ward attains age 14.

****NOTE: Is this provision now worded as you intend?

and s. 49.454

(c) Establish a trust as specified under 42 USC 1396p (d) (4) and transfer assets into the trust.

(d) Purchase an annuity or insurance contract and exercise rights to elect options or change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value.

(e) Ascertain and exercise any rights available to the ward under a retirement plan or account. establish,

****NOTE: I did not draft "Establish," as proposed, because a guardian would not, for instance, have the right to establish a right in a retirement plan, did you mean "Ascertain," as I have drafted? "Make application for?"

(f) Exercise any elective rights that accrue to the ward as the result of the death of the ward's spouse or parent.

(g) Release or disclaim, under s. 854.13, any interest of the ward that is received by will, intestate succession, nontestamentary transfer at death, or other transfer.

***NOTE: By "lifetime transfer," do you mean during the life of the ward? If so, "lifetime" seems unnecessary; is "other" transfer, instead, okay?

(h) ~~A guardian of the estate appointed under this chapter for a married person may exercise with the approval of the court, except as limited under s. 880.37, any management and control right over the marital property or property other than marital property and any right in the business affairs which the married person could exercise under ch. 766 if the person were not determined under s. 880.12 to be a proper subject for guardianship. Under this section, a guardian may consent to act together in or join in any transaction for which consent or joinder of both spouses is required or may execute~~ Execute under s. 766.58 a marital property agreement with the other ward's spouse or intended spouse, but may not make, amend or revoke a will.

INSERT
25

codify

***NOTE: I understand that, because of the creation of s. 54.21, s. 54.20(2) (h) is ~~not~~ intended to ~~override any of~~ the court's interpretation of s. 880.173 in *The Guardianship of F.E.H.*, 154 Wis. 2d 576 (1990).

(i) Provide support for an individual whom the ward is not legally obligated to support.

(j) Convey or release a contingent or expectation interest in property, including a marital property right and any right of survivorship that is incidental to a joint tenancy or survivorship marital property.

(k) Adjust, compromise, and discharge all debts and claims for damages due the ward.

***NOTE: Are these debts of the ward or debts payable to the ward? If the former, the language is redundant to s. 54.19 (7) (renumbered from s. 880.22 (1)).

(L) In all cases ~~where~~ in which the court ~~deems it~~ determines that it is advantageous to continue the business of a ward, ~~such business may be continued~~

by the guardian of the estate on such continue the business on any terms and conditions as may be specified in the order of the court.

(m) ~~The guardian or a creditor of any ward may apply~~ Apply to the court for adjustment of any claims against the ward incurred ~~prior to~~ before entry of the order appointing the guardian or the filing of a lis pendens as provided in s. 880.215 54.47. The court shall by order fix the time and place it will adjust claims and the time within which all claims ~~must~~ shall be presented ~~or be barred~~. Notice of ~~the time and place so fixed and limited~~ these times and the place shall be given by publication as in ~~estates of decedents; and all statutes relating to claims against and in favor of~~ estates of decedents provided in s. 879.05 (4), and ch. 859 generally shall apply. ~~As in the settlement of estates of deceased persons, after~~ After the court has made the order, no action or proceeding may be commenced or maintained in any court against the ward upon any claim ~~of~~ over which the circuit court has jurisdiction.

(3) POWERS THAT DO NOT REQUIRE COURT APPROVAL. The guardian of the estate may do any of the following without first receiving the court's approval:

(a) Provide support from the ward's ~~estate~~ income and assets for an individual whom the ward is legally obligated to support.

(b) Enter into a contract, other than a contract that is specified in sub. (2) or that is otherwise prohibited under this chapter. financial

(c) Exercise options of the ward to purchase securities or other property.

(d) Authorize access to or release of the ward's confidential records.

(e) Apply for public and private benefits.

(K) (f) Take any other action, except an action specified under sub. (2), that is reasonable or appropriate to the duties of the guardian of the estate.

MOVE
THIS
TO
p. 27

(f) ~~The guardian of the estate may, with the approval of the court, after such notice as the court directs, retain~~ Retain any real or personal property possessed by ~~that~~ the ward at the time of the appointment of the ~~possesses when the guardian or subsequently acquired by~~ is appointed or that the ward acquires by gift or inheritance for such period of time as shall be designated in the order of the court approving such retention, without regard to ch. 881 during the guardian's appointment.

(h) ~~The guardian of the estate may, without approval of the court, invest~~ Invest and reinvest the proceeds of sale of any guardianship assets of the ward and any of the ward's other moneys in the guardian's possession in accordance with ch. 881.

(i) ~~The guardian of the estate may, with the approval of the court, after~~ Notwithstanding ch. 881, after such notice as the court directs, and subject to ch. 786, invest the proceeds of sale of any guardianship assets of the ward and any of the ward's other moneys in the guardian's possession in such the real or personal property as the court determines that is determined by the court to be in the best interests of the guardianship estate, without regard to of the ward ch. 881.

(j) ~~The guardian of the estate may, without approval of the court, sell~~ Subject to ch. 786, sell any property of the guardianship estate of the ward that is acquired by the guardian pursuant to sub. (4) under par. (h) or (i). at fair market value

(k) ~~The guardian shall settle~~ Settle all accounts of the ward and ~~may demand, sue for, collect and receive all debts and claims for damages due him or her, or may, with the approval of the circuit court, compound and discharge the same, and shall appear for and represent his or her~~ the ward in all actions and proceedings except where those for which another person is appointed for that purpose.

54.21 Petition to transfer ward's assets to another. (1) In this section:

MATERIAL
FROM p.
26 goes
HERE

claims and

(a) "Disabled" has the meaning given in s. 49.468 (1)(a)1.
**** NOTE: Is this definition acceptable to you?

(b) (a) "Other individual" means any of the following:

1. The ward's spouse, if any.

or disabled

INSERT
28

3 2. The guardian ad litem of the ward's minor child, if any.

4 3. The ward's disabled child, if any.

**** NOTE: What does "disabled" mean in this context? Developmental disability?
Physical disability?

5 4. Any of the ward's siblings who has an ownership interest in property that is co-owned with the ward.

6 5. Any of the ward's children who is a caregiver, as defined in s. 46.986 (1) (b), for the ward.
provided care
as specified in 42 USC 1396p (c)(2)(A) iv

**** NOTE: Is the definition of "caregiver" suitable for your purposes?

c (b) "Will or ^{trust,} ^{other} similar instrument" includes a revocable or irrevocable trust, a durable power of attorney, or a marital property agreement.
authorizing and

(2) A guardian or other individual who seeks an order directing the guardian of the estate to transfer any of a ward's ^{income or} assets to or for the benefit of any person shall submit to the court a petition that specifies all of the following:

**** NOTE: Wouldn't "guardian" in sub. (2) (intro.) actually be "guardian of the person," since a guardian includes a guardian of the estate?

income and assets
(a) Whether a proceeding by anyone seeking this authority with respect to the ward's ~~property~~ was previously commenced and, if so, a description of the nature of the proceeding and the disposition made of it.

(b) The amount and nature of the ward's financial obligations, including moneys currently and prospectively required to provide for the ward's maintenance, support, and well-being and to provide for others dependent upon the ward for support, regardless of whether the ward is legally obligated to provide the support. If the petitioner has access to a copy of a court order or written agreement that

specifies support obligations of the ward, the petitioner shall attach the copy to the petition.

(c) The ~~property~~ ^{income and assets} of the ward that is the subject of the petition, the proposed disposition of the property, and the reasons for the disposition.

(d) The wishes, if ascertainable, of the ward.

(e) As specified in sub. (3), whether the ward has previously executed a will or similar instrument.

(f) A description of any significant gifts or patterns of gifts that the ward has made.

INSERT 29
(g) The names, post-office addresses, and relationships to the ward of all of the following:

1. Any presumptive adult heirs of the ward.
2. If the ward has previously executed a will or ^{trust,} similar instrument, the named or described beneficiaries, if known, under the most recent will or ^{who can be ascertained with reasonable diligence} similar instrument executed by the ward.

(3) (a) If a ward has previously executed a will or ^{trust,} similar instrument and the petitioner is able, with reasonable diligence, to obtain a copy, the petitioner shall provide the copy to the court, together with a statement that specifies all of the following:

1. The manner in which the copy was secured.
2. The manner in which the terms of the will or ^{other} similar instrument became known to the petitioner.
3. The basis for the petitioner's belief that the copy is of the ward's most recently executed will or ^{other} similar instrument.

other dispositive estate planning document

(b) If the petitioner is unable to obtain a copy of the most recently executed will or ~~similar instrument~~ or is unable to determine if the ward has previously executed a will or ~~similar instrument~~, the petitioner shall provide a statement to the court that specifies the efforts that were made by the petitioner to obtain a copy or ascertain the information.

(c) If a copy of the most recently executed will or ~~similar instrument~~ is not otherwise available, the court may order the person who has the original will or ~~similar instrument~~ to provide a photocopy to the court for in camera examination. The court may provide the photocopy to the parties to the proceeding unless the court finds that doing so is contrary to the ward's best interests.

(d) The petitioner and the court shall keep confidential the information in a will or ~~similar instrument~~, or a copy of the will or ~~similar instrument~~, under this subsection, and may not, unless otherwise ~~authorize~~ *authorize* disclosed that information.

***NOTE: Does this paragraph meet your intent?

authorize

(4) The petitioner shall serve notice upon all of the following, together with a copy of the petition, stating that the petitioner will move the court, at a time and place named in the notice, for the order described in the petition:

(a) If not the same as the petitioner, the guardian of the person and the guardian of the estate. *i*

(b) Unless the court dispenses with notice under this subsection, the persons specified in sub. (2) (g), if known to the petitioner.

(c) The county corporation counsel, if the county has an interest in the matter.

***NOTE: This means that the petitioner determines whether the county has an interest and gets notice. Is that okay?

(5) The court shall consider all of the following in reviewing the petition:

(a) The wishes of the ward, if known.

(b) Whether the duration of the ward's ~~disability~~ ^{impairment} is likely to be sufficiently brief so as to justify dismissal of the proceedings in anticipation of the ward's recovered ability to decide whether, and to whom, to transfer his or her assets. ^{income and assets}

(c) Whether the proposed transfer will benefit the ward, the ward's ~~estate~~ ^{income and assets}, or members of the ward's immediate family.

****NOTE: I understand that this provision is sought to codify *Matter of Guardianship of F.E.H.*, 154 Wis. 2d 576 (1990). Therefore, I included "immediate" as an adjective modifying "family".

(d) ~~Except for gifting that is authorized under s. 54.20 (2) (a),~~ whether the donees or beneficiaries under the proposed disposition are reasonably expected objects of the ward's generosity and whether the proposed disposition is consistent with any ascertained wishes of the ward or known estate plan or pattern of lifetime gifts that he or she has made.

(e) Whether the proposed disposition will produce tax savings that will significantly benefit the ward, his or her dependents, or other persons for whom the ward would be concerned.

(f) The factors specified in sub. (2) (a) to (g) and any statements or other evidence under sub. (3). ⁱ

(g) Any other factors that the court determines are relevant. ^{authorizing and}

(6) The court may grant the petition under sub. (2) and enter an order directing the guardian of the estate to take action requested in the petition, if the court finds and records all of the following:

(a) That the ward has incapacity to perform the act for which approval is sought and the incapacity is not likely to change positively within a reasonable period of time.

(b) That a competent individual in the position of the ward would likely perform the act under the same circumstances.

(c) That, before the ward had incapacity to perform the act for which approval is sought, he or she did not manifest intent that is inconsistent with the act.

(7) Nothing in this section requires a guardian to file a petition under this section and a guardian is not liable or accountable to any person for having failed to file a petition under this section.

54.22 Petition for authority to sell, mortgage, pledge, lease, or exchange ward's property. The court, on the application petition of the guardian of the estate or of any other person interested in the estate of ~~any a~~ ward, after ~~such~~ notice if any, as any notice that the court directs, may authorize or require the guardian to sell, mortgage, pledge, lease, or exchange any property of the guardianship estate of the ward upon such terms as the court may order, subject to ch. 786, for the purpose of paying the ward's debts, providing for the ward's care, maintenance, and education and the care, maintenance, and education of the ward's dependents, investing the proceeds, or for any other purpose ~~which that~~ is in the best interest of the ward.

****NOTE: I am repeating this ****NOTE because the response was somewhat unclear. This provision appears to be in direct conflict with s. 54.19 (2), (3), and (4), each of which require the guardian to act with respect to the ward's property in ways that are redundant to this provision, but *without* requiring court approval. Which alternative do you prefer? Is the issue related to a dollar value on the property, i.e., property over a value of, say, \$100,000 would require court approval before the guardian may act? Or should either this provision or s. 54.19 (2), (3), and (4) drop out?

54.23 Trust Banks and trust companies, exemption from investment restraints. The limitations of this section Nothing in this chapter relating to the retention, sale, investment, or reinvestment of any asset shall not be applicable may

be interpreted to be inapplicable to any bank or trust company authorized to exercise trust powers.

54.25 Guardian Duties and powers of guardian of the person of incompetent. (1) DUTIES. A guardian of the person shall do all of the following:

(a) ~~A guardian of the person of an incompetent appointed under s. 880.33 shall make~~ Make an annual report on the condition of the ward to the court that ordered the guardianship and to the county department designated under s. 55.02. That county department shall develop reporting requirements for the guardian of the person. The report shall include, ~~but not be limited to,~~ the location of the ward, the health condition of the ward, any recommendations regarding the ward, and a statement of as to whether or not the ward is living in the least restrictive environment consistent with the needs of the ward. ~~The guardian may fulfill the requirement under this subsection by submitting the report required under s. 55.06~~ (10).

(b) ~~A guardian of the person shall endeavor~~ Endeavor to secure any necessary care, ~~or services or appropriate protective placement on behalf of~~ for the ward: that are in the ward's best interests, based on all of the following:

1. ~~Regularly inspect,~~ in person, ^{Regular inspection} the ward's condition, surroundings, and treatment.

2. ~~Examine~~ ^{Examination} of the ward's patient health care records and treatment records, ^{and authorization for redisclosure as appropriate}

3. ~~Attend and participate~~ ^{Inquiry} in staff meetings of any facility in which the ward resides or is a patient, if the meeting includes a discussion of the ward's treatment and care. ^{Attendance and participation}

4. ~~Inquire~~ into the risks and benefits of, and alternatives to, treatment for the ward, particularly if drastic or restrictive treatment is proposed.

5. Specific consultation with providers of health care and social services in making all necessary treatment decisions.

**** NOTE: Is this worded as you intend?

Rights and powers of a guardian

(2) POWERS. (a) ~~Presumption in favor of limited guardianship~~ I A guardian of the person has only those rights and powers that the guardian is specifically authorized to exercise by court order. Any other right or power is retained by the ward, unless the ward has been declared incompetent to exercise the right under par. (c) or the power has been transferred to the guardian under par. (d).

(b) *Rights retained by individuals determined incompetent.* An individual determined incompetent retains the power to exercise all of the following rights, without consent of the guardian:

1. To have access to and communicate privately with the court and with governmental representatives, including the right to have input into plans for support services, the right to initiate grievances, including under state and federal law regarding resident ^{or} of patient rights, and the right to participate in administrative hearings and court proceedings.

2. To have access to, communicate privately with, and retain legal counsel, with fees paid ^{from} by the ward's estate, subject to court approval. *the income and assets of the ward*

3. To have access to and communicate privately with representatives of the protection and advocacy agency under s. 51.62 and the board on aging and long-term care.

4. To protest a residential placement made under s. 55.05 (5), and to be discharged from a residential placement unless the individual is protectively placed under s. 55.06 or the elements of s. 55.06 (11) are present.

5. To petition for court review of guardianship, protective services, protective placement, or commitment orders.

6. To give or withhold a consent reserved to the individual under ch. 51.

7. To exercise any other rights specifically reserved to the individual by statute or the constitutions of the state or the United States, including the rights to free speech, freedom of association, and the free exercise of religious expression.

(c) *Declaration of incompetence to exercise certain rights.* 1. The court may, as part of a proceeding under s. 54.44[✓] in which an individual is found incompetent and ^aguardian is appointed, declare that the individual has incapacity to exercise one or more of the following rights: X

- a. The right to consent to marriage.
- b. The right to execute a will.
- c. The right to serve on a jury.
- d. The right to apply for an operator's license, a license issued under ch. 29[✓], or a credential, as defined in s. 440.01 (2) (a)[✓], if the court finds that the individual is incapable of understanding the nature and risks of the licensed or credentialed activity, to the extent that engaging in the activity would pose a substantial risk of physical harm to the individual or others. A failure to find that an individual is incapable of applying for a license or credential is not a finding that the individual qualifies for the license or credential under applicable laws and rules.
- e. The right to consent to sterilization, if the court finds that the individual is incapable of understanding the nature, risk, and benefits of sterilization, after the nature, risk, and benefits have been presented in a form that the individual is most likely to understand.
- f. The right to consent to organ, tissue, or bone marrow donation.

g. The right to vote, if the court finds that the individual is incapable of understanding the objective of the elective process.

****NOTE: Section 880.33 (9), stats., upon which this language is based, requires that the court's determination be communicated in writing by the clerk of court to the election official or agency charged under s. 6.48, 6.92, 6.925, or 6.93 with the responsibility for determining challenges to registration and voting that may be directed against that elector. Otherwise, I think it is possible that the official or agency may have no way of knowing if the vote is countable. Do you want this requirement added to the language? This NOTE also applies to subd. 4.

2. Any finding under subd. 1. that an individual lacks evaluative capacity to exercise a right must be based on clear and convincing evidence. In the absence of such a finding, the right is retained by the individual.

3. If an individual is declared not competent to exercise a right under subd. 1. or 4., a guardian may not exercise the right or provide consent for exercise of the right on behalf of the individual. If the court finds with respect to a right listed under subd. 1. a., d., e., or f. that the individual is competent to exercise the right under some but not all circumstances, the court may order that the individual retains the right to exercise the right only with consent of the guardian of the person. *to register*

4. Regardless of whether a guardian is appointed, a court may declare that an individual is not competent to exercise the right to vote if it finds by clear and convincing evidence that the individual is incapable of understanding the objective of the elective process. If the petition for a declaration of ~~competence~~ *incompetence* to vote is not part of a petition for guardianship, the same procedures shall apply as would apply for a petition for guardianship. *INSIST 36* *or to vote in an election*

~~****NOTE: Please see the ****NOTE under subd. 1 g., above.~~

(d) *1. Guardian authority to exercise certain powers.* A court may authorize a guardian of the person to exercise all or part of any of the powers specified in subd. 2. only if it finds, by clear and convincing evidence, that the individual lacks evaluative capacity to exercise the power. The court shall authorize the guardian to exercise only those powers that are necessary to provide for the individual's personal

that is in the ward's best interest

and subject to any limitation under s. 54.46 (3)(b)

needs, safety, and rights and to exercise the powers in a manner this is appropriate to the individual and that constitutes the least restrictive form of intervention. The court may limit the authority of the guardian with respect to any power to allow the individual to retain power to make decisions about which the individual is able effectively to receive and evaluate information and communicate decisions.

2. All of the following are powers subject to subd. 1:

proffering

a. Except as provided under subd. 2. b., c., and d., and except for consent to psychiatric treatment and medication under ch. 51, the power to give informed consent to voluntary or involuntary medical examination and treatment and to the voluntary receipt by the ward of medication, including any appropriate psychotropic medication, if the guardian has first made a good-faith attempt to discuss with the ward the ward's voluntary receipt of the psychotropic medication and the ward does not protest. For purposes of this subdivision 2. a., "protest" means make more than one discernible negative response, other than mere silence, to the offer of, recommendation for, or other proffering of voluntary receipt of psychotropic medication. "Protest" does not mean a discernible negative response to a proposed method of administration of the psychotropic medication. A guardian may consent to the involuntary administration of psychotropic medication only pursuant to a court order under ch. 55. In determining whether medication or medical treatment is in the ward's best interest, the guardian shall consider the invasiveness of the medication or treatment and the likely benefits and side effects of the medication or treatment.

other than psychotropic medication,

55.14
s. 55.14

under

b. Unless it can be shown by clear and convincing evidence that the ward would never have consented to research participation, the power to authorize the ward's participation in an accredited or certified research project if the research might help

the ward; or if the research might not help the ward but might help others, and the research involves no more than minimal risk of harm to the ward.

c. The power to authorize the ward's participation in research that might not help the ward but might help others even if the research involves greater than minimal risk of harm to the ward if the guardian can establish by clear and convincing evidence that the ward would have elected to participate in such research; and the proposed research was reviewed and approved by the research and human rights committee of the institution conducting the research. The committee shall have determined that the research complies with the principles of the statement on the use of human subjects for research adopted by the American Association on Mental Deficiency, and with the federal regulations for research involving human subjects for federally supported projects.

d. Unless it can be shown by clear and convincing evidence that the ward would never have consented to any experimental treatment, the power to consent to experimental treatment if the court finds that the ward's mental or physical status presents a life-threatening condition; the proposed experimental treatment may be a life saving remedy; all other reasonable traditional alternatives have been exhausted; 2 examining physicians have recommended^{ed} the treatment; and, in the court's judgment, the proposed experimental treatment is in the ward's best interests.

e. The power to give informed consent to social and supported living services.

f. The power to give informed consent to release of medical, treatment, and other confidential records.

g. ~~The power to determine the individual's county or state of residence.~~

h. The power to make decisions related to mobility and travel.

INSERT 38

or make a temporary protective placement under s. 55.06 (12)

i. The power to admit the individual to residential facilities as provided under s. 55.05 (5) *✓* or make an emergency protective placement under s. 55.06 (11). *✓✓*

j. The power to choose providers of medical, social, and support living services.

k. The power to make decisions regarding educational and vocational placement and support services or employment.

l. The power to make decisions regarding initiating a petition for the termination of marriage.

m. The power to receive all notices on behalf of the ward.

n. The power to act in all proceedings as an advocate of the ward, except the power to enter into a contract that binds the ward or the ward's property or to represent the ward in any legal proceedings pertaining to the property, unless the guardian of the person is also the guardian of the estate.

o. The power to apply for protective placement under s. 55.06 or for commitment under s. 51.20 or 51.45 (13) for the ward.

p. The power to have ~~charge~~ of the ward. *custody*

STET

****NOTE: In s. 54.25 (2) (d) 2. i., m., n., o., and p., I have attempted to "weave" in the parts of s. 880.38 (1), stats., that seemed to fit (in LRB-0039/P1, this provision was renumbered a 54.25 (1) (c)), but it didn't fit well there. The power to "have charge of" the ward is a change from the statutory "have custody of"; is it an acceptable wording change? Back again to my confusion about prohibiting the guardian of the person from entering into a contract that binds the ward — what about a contract with a facility (e.g., a nursing home), which requires a financial commitment? Would it be necessary for the guardian of the estate to sign? If the prohibition is unchanged, the power of the guardian of the person to "admit a ward to certain residential facilities" under subd. *h.* is, it would seem, significantly less than it first appears to be. *If you wish to have me make changes, what changes do you want?*

q. Any other power the court may specifically identify.

3. In exercising powers and duties delegated to the guardian of the person under this paragraph, the guardian of the person shall, consistent with meeting the individual's essential requirements for health and safety and protecting the individual from abuse, exploitation, and neglect, do all of the following:

a. Place the least possible restriction on the individual's personal liberty and exercise of constitutional and statutory rights, and promote the greatest possible integration of the individual into his or her community.

b. Make diligent efforts to identify and honor the individual's preferences with respect to choice of place of living, personal liberty and mobility, choice of associates, communication with others, personal privacy, and choices related to sexual expression and procreation. In making a decision to act contrary to the individual's expressed wishes, the guardian shall take into account the individual's understanding of the nature and consequences of the decision, the level of risk involved, the value of the opportunity for the individual to develop decision-making skills, and the need of the individual for wider experience.

c. Consider whether the ward's income estate is sufficient to pay for the needed services.

SUBCHAPTER IV

PROCEDURES

the ward's income and assets

individual

54.30 Jurisdiction and venue. (1) ~~JURISDICTION IN CIRCUIT COURT.~~ The circuit court ~~shall have~~ has subject matter jurisdiction over all petitions for guardianship. A guardianship of the estate of any ~~person,~~ once granted, shall extend to all of ~~his or her estate~~ in this state and shall exclude the jurisdiction of every other circuit court, except as provided in ch. 786.

do not yet know what, if any, changes you have

****NOTE: I believe that you have changes for this subsection, based on changes from the Legislative Council ch. 55 Committee, but am not sure what they are.

****NOTE: I did not draft language in your proposal that establishes jurisdiction in circuit court over all petitions for protective placement, as such a provision properly belongs in ch. 55. Or, because ch. 55, stats., is proposed to undergo extensive changes under the Legislative Council committee, perhaps such a provision, if not included in the Legislative Council proposal, should be an amendment to one of the committee's appropriate bills.

(2) **VENUE.** All petitions for guardianship of residents of the state shall be directed to the circuit court of the county of residence of the ~~person subject to~~

or of the county in which the petitioner proposes that the proposed ward reside

guardianship proposed ward or of the county in which the person proposed ward is physically present. A petition for guardianship of the person or estate of a nonresident may be directed to the circuit court of any county where in which the person nonresident or any property ^{*assets*} of the nonresident may be found.

****NOTE: I did not draft language of your proposal that requires that petitions for protective placement be directed to the circuit court, because such a provision more properly belongs in ch. 55. Do you want me to draft it there?

INSERT
41

****NOTE: Please let me know specifically what you want me to do about the definition of residence and change of residence of a ward by a guardian.

(3) CHANGE OF VENUE. (a) *Original proceeding*. The court wherein in which a petition is first filed shall determine venue. If it is determined the court determines that venue lies in another county, the court shall order the entire record certified to the proper court. A court wherein in which a subsequent petition is filed shall, upon being if it is satisfied of that an earlier filing took place in another court, summarily dismiss such the petition.

(b) *Change of residence of ward or guardian*. If a guardian removes from the county where appointed to another county within the state or a ^{*strike space*} ward removes from the county in which he or she has resided changes residence from one county to another county within the state, the circuit court for the county in which the ward resides may appoint a new guardian as provided by law for the appointment of a guardian. Upon verified petition of the new guardian, accompanied by a certified copy of appointment and bond if the appointment is in another county, and upon the notice prescribed by s. 879.05 to the originally appointed guardian, unless he or she is the same person, and to any other persons that the court shall order, the court of original appointment may order the guardianship accounts settled and the property delivered to the new guardian. venue may be transferred to the ward's new county of residence under the following procedure:

An interested person
1. ~~A~~ person shall file a petition for change of venue in the county in which venue for the guardianship currently lies. *and corporation counsel*

2. The person filing the petition under subd. 1. shall give notice to the corporation counsel of the county in which venue for the guardianship currently lies ~~and~~ to the register in probate for the county to which change of venue is sought.

*****NOTE: Should notice also be given to the corporation counsel of the county to which change of venue is sought?*

3. If no objection to the change of venue is made within 15 days after the date on which notice is given under subd. 2., the circuit court of the county in which venue for the guardianship currently lies may enter an order changing venue. If objection to the change of venue is made within 15 days after the date on which notice is given under subd. 2., the circuit court of the county in which venue for the guardianship currently lies shall set a date for a hearing within 7 days after the objection is made and shall give notice of the hearing to the corporation counsel of that county and to the corporation counsel and register in probate of the county to which change of venue is sought.

INSERT 42
54.34 Petition; fees for guardianship. (1) Any relative, public official or other person; may petition for the appointment of a guardian of a person subject to guardianship for an individual. Such The petition shall state, ~~so far as may be~~ all of the following, if known to the petitioner:

*****NOTE: I did not add "or agency" after "person" in s. 54.34 (1), as requested; the definition of "person" in 990.01 (26), stats., which controls terms used throughout the statutes, is broad enough to encompass agencies.*

(a) The name, date of birth, residence and post-office address of the proposed ward.

(b) The specific nature of the proposed ward's alleged incapacity ~~with specification of the incompetency or spendthrift habits.~~

(c) The approximate value of the proposed ward's property and a general description of its nature.

(d) Any assets of the proposed ward previously derived from or benefits of the proposed ward now due and payable from the U.S. department of veterans affairs.

(e) Any other claim, income, compensation, pension, insurance or allowance to which the proposed ward may be entitled.

(f) Whether the proposed ward has any guardian presently.

(g) The name and post-office address of any person nominated as guardian by the petitioner.

(h) The names and post-office addresses of ~~the spouse and presumptive or apparent adult heirs of the proposed ward, and all other persons believed by the petitioner to be interested parties.~~

(i) The name and post-office address of the person or institution ^g ~~having the~~ if any, that has care and custody of the proposed ward or the facility, if any, that is providing care to the proposed ward. X

(j) The interest of the petitioner, and, if a public official ~~or creditor~~ is the ^{*} petitioner, ~~then the fact of indebtedness or continuing liability for maintenance or~~ ^{*} ~~continuing breach of the public peace as well as~~ ~~and~~ the authority of the petitioner to act.

(k) Whether the proposed ward is a recipient of a public benefit, including medical assistance or a benefit under s. 46.27. ✓

(L) The agent under any current, valid power of attorney for health care or durable power of attorney that the proposed ward has executed.

(m) Whether the petitioner is requesting a full or limited guardianship and, if limited, the specific authority sought by the petitioner for the guardian or the specific rights of the individual that the petitioner seeks to have removed or transferred.

(n) Whether the proposed ward, if married, has children who are not children of the current marriage.

(2) A petition for guardianship may also include an application for protective placement or protective services or both under ch. 55.

***NOTE: Instead of moving s. 54.34 (3) (renumbered from s. 880.07 (4), stats.), I repealed it, because, as you noted, it's redundant to s. 54.60 (5).

54.36 Examination of proposed ward. Whenever it is proposed to appoint

a guardian on the ground of a proposed ward's alleged incompetency, a licensed physician or licensed psychologist, or both, shall furnish a written statement concerning the mental condition ~~any~~ incapacity of the proposed ward, based upon examination.

The privilege under s. 905.04 shall does not apply to this the statement. A The petitioner shall provide a copy of the statement shall be provided to the proposed ward, or his or her counsel, the guardian ad litem, and the petitioner's attorney, if any. Prior to the examination, under this subsection, of a

person alleged to be not competent to refuse psychotropic medication under s. 880.07 (1m), the person ~~the proposed ward~~ shall be informed that his or her statements

made by the proposed ward may be used as a basis for a finding of incompetency and an order for protective services, including psychotropic medication. The person shall

also be informed that he or she has a right to remain silent refuse to participate in the examination or speak to the examiner and that the examiner is required to report

to the court even if the person remains silent does not speak to the examiner. The issuance of such a warning to the person prior to each examination establishes a

the physician's or psychologist's

report stating ~~his or her~~ professional opinion regarding the presence and likely duration of any medical or other condition causing

on which the report is based, the guardian ad litem, physician or psychologist shall inform the proposed ward that

examine the proposed ward and

(1) - B

physician or psychologist

, absent a court order,

proposed ward

physician or psychologist

proposed ward

physician or psychologist.

presumption that the person understands that he or she need not speak to the examiner. Nothing in this section prohibits the use of a report by a physician or psychologist that is based on an examination of the proposed ward by the physician or psychologist before filing the petition for appointment of a guardian, but the court will consider the recency of the report in determining whether the report sufficiently describes the proposed ward's current state and in determining the weight to be given to the report. plan

****NOTE: Who informs the proposed ward that his or her statements may be used as a basis for a finding of incompetency? The petitioner? Other?

****NOTE: Please review this changed language to make sure I've now captured your intent.

INSERT 45

54.38 Notice. (1) FORM AND DELIVERY OF NOTICE. A notice shall be in writing.

A copy of the petition, ~~motion~~, or other required document shall be attached to the notice. Unless otherwise provided, notice may be delivered in person, by certified mail with return receipt requested, or by facsimile transmission. Notice is considered to be given by proof of personal delivery or by proof that the notice was mailed to the last-known address of the recipient or was sent by facsimile transmission to the last-known facsimile transmission number of the recipient.

****NOTE: Instead of drafting "petition or other moving papers," I consulted Bob Nelson, the civil procedure drafter, who suggested "petition, motion, or other required document." This same comment applies to s. 54.38 (2)(a).

(2) NOTICE OF HEARING FOR APPOINTMENTS AND REHEARINGS, SERVICE, AND DELIVERY.

(intro.) Upon the filing of a petition for guardianship, and the court being of the person or of the estate, including appointment or change of a guardian, if the court is satisfied as to compliance with s. 880.07 54.34, the court shall, except as provided in sub. (3), order service of notice on the proposed ward and guardian, if any, and delivery of notice by the petitioner to interested persons of the time and place of the hearing as follows:

to deliver

the petitioner to serve

and on the existing guardian, if any, by personal service or by registered or certified mail,

(a) ~~A~~ ^{ward} petitioner shall have notice served of a petition for appointment or change of a guardian upon On the proposed incompetent ward and existing guardian, if any, by personal service at least 10 days before the time set for hearing. If ~~such proposed incompetent~~ the proposed ward is in custody or confinement, ~~the~~ ^{plain} petitioner shall have notice served by registered or certified mail on the proposed incompetent's ward's custodian, who shall immediately serve it on the proposed ~~incompetent~~ ward. The process server or custodian shall inform the proposed ~~incompetent~~ ward of the complete contents of the notice ~~and certify thereon~~ and petition, motion, or other required document; certify on the notice that the process server or custodian served and informed the proposed ~~incompetent and returned~~ ward; and return the certificate and notice to the circuit judge. The notice shall include the names of all persons who are petitioning for guardianship. A copy of the petition shall be attached to the notice. The court shall cause the proposed incompetent, if able to attend, to be produced at the hearing. The proposed incompetent is presumed able to attend unless, after a personal interview, the guardian ad litem certifies in writing to the court the specific reasons why the person is unable to attend. If the person is unable to attend a hearing because of physical inaccessibility or lack of transportation, the court shall hold the hearing in a place where the person may attend if requested by the proposed ward, guardian ad litem, adversary counsel or other interested person. Such notice shall also be given personally or by mail at least 10 days before the hearing to the proposed incompetent's counsel, if any, guardian ad litem, presumptive adult heirs or other persons who have legal or physical custody of the proposed incompetent whose names and addresses are known to the petitioner or can with reasonable diligence be ascertained, to any governmental or private agency, charity or foundation from which the proposed incompetent is receiving aid and to

~~such other persons or entities as the court may require. The court shall then proceed under s. 880.33 court.~~

(b) Personally or by mail at least 10 days before the time set for hearing, to all of the following:

1. The proposed ward's counsel, if any.
2. The proposed ward's guardian ad litem.
3. Any presumptive adult heirs of the proposed ward.
4. Any other interested persons, unless specifically waived by the court.
5. The agent under any durable power of attorney or power of attorney for health care of the ward.
6. Any person who has legal or physical custody of the proposed ward.
7. Any public or private agency, charity, or foundation from which the proposed ward is receiving aid or assistance.
8. The proposed guardian for the proposed ward.
9. Any other person that the court requires.

as specified in
s. 851.09,

(3) NOTICE OF HEARING FOR APPOINTMENT OF GUARDIAN FOR A MINOR. ~~When If~~ the proposed ward is a minor, ~~notice shall be given as provided in s. 879.05 the court shall order distribution of notice by the petitioner of the time and place of the hearing to~~ all of the following persons, if applicable:

delivery

- (a) The proposed ward's spouse, if any.
- (b) The proposed ward's ~~parents~~ parent, unless the parent's parental rights have been judicially terminated.
- (c) ~~A minor~~ The proposed ward, if the proposed ward is over 14 years of age unless the minor appears at the hearing.
- (d) Any other person, ~~agency, institution, welfare department or other entity~~ having that has the legal or actual physical custody of the minor.

***NOTE: I did not change "that" to "who," as requested, since the term "person" may encompass units of government, etc.

(4) REHEARINGS. Notice of a rehearing to determine if a ward is a proper subject to continue under guardianship shall be given as required for the appointment of a guardian under subs. (1), (2), and (3).

(5) NOTICE OF APPOINTMENT OF GUARDIAN OF A MINOR WARD. If for any reason the court fails to appoint as guardian the nominee of the minor, the guardian who qualifies shall give notice of the guardian's appointment to the minor by certified mail addressed to the minor's last-known post-office address and shall file an affidavit of such the mailing shall be filed with the court within 10 days after the issuance of letters notice is given.

(3) (d). (6) NOTICE OF PETITION AND HEARING FOR TEMPORARY GUARDIANSHIP. The person petitioning petitioner for appointment of a temporary guardian shall cause give notice to be given under s. 880.08 of that the petition to the minor, spendthrift or alleged incompetent and, if the appointment is made, shall give notice of the appointment to the ward. The time limits of s. 880.08 do not apply to notice given under this subsection proposed ward. The notice shall be served before or at the time the petition is filed or as soon thereafter as possible and shall include notice of the right to counsel and of the right to petition for reconsideration or modification of the temporary guardianship at any time under s. 880.34 within 30 days of receipt of the notice 54.50 (1)(c) 4. The petitioner shall serve notice of the order for hearing on the proposed ward before the hearing or not later than 3 calendar days after the hearing. If the petitioner serves notice after the hearing is conducted and the court has entered an order, the petitioner shall include the court's order with the notice of the order for hearing.

for appointment
of a guardian

DAK-0039/P2Stat
DAK:cjs:rs&pg

****NOTE: As requested, I retained s. 880.15 (1s), stats., and replaced the former language of s. 54.50 (1) (c) 2. with it. I added to it the language you had requested for a redraft of s. 54.50 (1) (c) 2., however. Rather than placing this in s. 54.50 (1) (c), I have put it in s. 54.38, the notice section. Please review.

54.40 Guardian ad litem in incompetency cases; appointment; duties; termination. (1) APPOINTMENT. The court shall appoint a guardian ad litem whenever it is proposed that the court appoint a guardian on the ground of incompetency under s. 880.33, when a petition is brought under s. 54.34 to protectively place a person or order protective services under s. 55.06, to review any protective placement or protective service order under s. 55.06, or to terminate a protective placement under s. 55.06, or at any other time that the court determines it is necessary.

(2) QUALIFICATIONS. The guardian ad litem shall be an attorney admitted to practice in this state. No person who is an interested party in a proceeding, appears as counsel in a proceeding on behalf of any party, or is a relative or representative of an interested party may be appointed guardian ad litem in that proceeding or in any other proceeding that involves the same proposed ward.

****NOTE: Should "interested party" be changed to "interested person"?

(3) RESPONSIBILITIES. The guardian ad litem shall be an advocate for the best interests of the proposed ward or alleged incompetent as to guardianship, protective placement, and protective services. The guardian ad litem shall function independently, in the same manner as an attorney for a party to the action, and shall consider, but shall not be bound by, the wishes of the proposed ward or alleged incompetent or the positions of others as to the best interests of the proposed ward or alleged incompetent. The guardian ad litem has none of the rights or duties of a general guardian.

(4) GENERAL DUTIES. A guardian ad litem shall do all of the following:

INSERT 49

and in
compliance
with
SCR
chapter
36

RESTORE
TO PLAIN
TEXT

RESTORE TO PLAIN TEXT

RESTORE
TO
PLAIN
TEXT

ward

individual
found

RESTORE TO
PLAIN TEXT

(a) Interview the proposed ward ~~or alleged incompetent~~ and explain the contents of the petition, the applicable hearing procedure, the right to counsel, and the right to request or continue a limited guardianship.

(b) Advise the proposed ward ~~or alleged incompetent~~, both orally and in writing, of that person's rights to be present at the hearing, to a jury trial, to an appeal, to counsel, and to an independent medical or psychological examination on the issue of competency, at county expense if the person is indigent.

INSERT
50

(c) Interview the proposed guardian, the proposed standby guardian, if any, and any other person seeking appointment as guardian and report to the court concerning the fitness of each individual interviewed to serve as guardian and concerning the report under s. 54.15 (8).

under ch. 243

***NOTE: Have I handled this provision as the memo intends? It was not clear to me that it had been agreed to employ the criminal history and patient abuse record search under s. 50.065, stats., for s. 54.15 (8) or here.

(d) 1. Review any power of attorney for health care under ch. 155, ~~or~~ any durable power of attorney executed by the proposed ward ~~or~~ any other advance planning ~~to avoid guardianship~~ in which the proposed ward had engaged.

2. Interview any agent appointed by the proposed ward under any document specified in subd. 1.

3. Report to the court concerning whether or not the proposed ward's advance planning is adequate to preclude guardianship.

(e) Request that the court order additional medical, psychological, or other evaluation, if necessary.

(f) If applicable, inform the court and petitioner's attorney or, if none, the petitioner that the proposed ward ~~or alleged incompetent~~ objects to a finding of incompetency, the present or proposed placement, or the recommendation of the

as ward

for financial
and
health care
decisionmaking

the need for

X